



## THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

### MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

**FROM** The Registrar, Supreme Court of Appeal  
**DATE** 30 March 2011  
**STATUS** Immediate

*Please note that the media summary is for the benefit of the media and does not form part of the judgment.*

***City of Johannesburg Metropolitan Municipality v Blue Moonlight  
(338/10) [2011] ZASCA 47 (30 March 2011)***

#### **Media Statement**

Today the Supreme Court of Appeal (SCA) found that the housing policy of the City of Johannesburg was unconstitutional to the extent that it excluded the respondent occupiers from consideration for temporary emergency accommodation. The SCA confirmed an order in terms of which the City was obliged to provide those occupiers whose names appeared on a list and those occupying through them with temporary emergency accommodation in a location as near as feasibly possible to the area where the property is situated provided that they are still resident at the property and have not voluntarily vacated it.

The South Gauteng High Court (Spilg J) at the instance of the owners of a building in Berea had ordered the eviction of the occupiers and had ordered the City of Johannesburg to provide temporary accommodation to the occupiers. It also made several allied orders including a compensation order in favour of the owners and provided for a stipend of sorts towards accommodation costs. The City's housing policy in terms of which it had excluded persons from being provided with temporary emergency accommodation who had not been evicted by it on the basis of unsafe conditions in terms of the National Building Regulations and Building Standards Act 103 of 1977. The occupiers had been evicted on the basis of health and safety concerns expressed by the counsel through two of its departments. The provisions of the aforesaid legislation were not relied upon.

The City was joined as a party to the proceedings in the court below after the owners had served its application for conviction on the occupiers. Before the SCA the City disavowed any obligation to house persons who fell into the category of the occupiers and who had been evicted at the instance of a private landlord. Before the SCA the City for the first time raised the defence that it had no original power to accommodate homeless persons and that it could only act in conjunction with national and provincial government. It submitted that it was unable to use its own funds, including ratepayer contributions to fund accommodation for desperately poor and homeless persons who fell into the category of the occupiers.

The SCA held that municipalities had a significant role to play in the progressive realisation of the right to adequate housing to poor persons such as the occupiers who were asserting their rights in terms of s 26 of the Constitution.

The SCA, whilst recognising the doctrine of the separation of powers and the limits of judicial intrusion and considering the facts of the case, held that the Municipality was obliged to provide temporary emergency housing to the occupiers as decant. It arrived at this conclusion after considering s 26 of the Constitution and a whole network of related legislation. The provision of temporary emergency accommodation to the occupiers, who were long-standing residents of Johannesburg and who were desperately poor, would put them in line in the right sequence towards the ultimate realisation of permanent accommodation. The SCA held that the City was not precluded from using its own funds to provide temporary emergency accommodation. Indeed, it had on its own version of events expended tens of millions of its own funds in the past towards providing housing to the indigent.

The SCA found that the City's housing policy in terms of which it excluded from consideration for temporary emergency housing persons such as the occupiers was unconstitutional. It held the policy to be inflexible and irrational. It effectively precluded the City from a proper consideration of the merits of the situation of desperately poor evictees. Furthermore, the SCA found the policy to be arbitrary and unequal in effect. The SCA said the following:

'In the application of its policy the City effectively ties its own hands and renders itself blind to the real plight and homelessness of persons who find themselves in the circumstances of the occupiers. It precludes itself from considering the duties placed on it by the Constitution. As stated above, by drawing the irrational and arbitrary distinction referred to, it is effectively putting potentially vast numbers of persons beyond State assistance in the face of an obligation to take positive steps to assist those who, because of their poverty and because of circumstances beyond their control, find themselves in dire need.'

The court went on to say the following:

'The differentiation between persons who have been evicted by the City from privately-owned dangerous buildings and by private landowners bears no rational connection to the City's

legitimate purpose of providing temporary accommodation to those who are vulnerable and most in need. Its policy does not factor in the degree of need of evictees in either situation because the personal circumstances and needs of *all* are irrelevant: while the unsafe condition of buildings is a sufficient basis for the City providing accommodation, as long as that the eviction is at its instance, the same does not apply when persons are evicted from unsafe buildings by private landlords even though the danger in the latter instance might in some cases be greater. The City's policy does not take this into account. Even though the City's notices to Blue Moonlight, referred to in paras 13 and 14 above, were not in terms of the National Building Regulations and Buildings Standards Act, in substance they addressed health and safety concerns. The distinction drawn by the City between the occupiers and those evicted by virtue of a notice in terms of the Act is also irrational.'

Before the SCA, the owners disavowed reliance on the monetary orders made by the court below in its favour. The SCA held that they were in any event not entitled to those orders. In respect of the stipend, the SCA could find no basis for the order and held that it was extraordinary to say the least. The appeal by the City against the order obliging it to house the occupiers and against the declaration of constitutional invalidity failed. It was held by the SCA that there was no need for the structural interdict crafted by the court below and that order was accordingly not upheld. The City was ordered to pay the occupiers' costs, including the costs of two counsel.

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